

1 **UNITED STATES DISTRICT COURT**2 **DISTRICT OF NEVADA**

3 UNITED STATES OF AMERICA

4 Plaintiff,

5 vs.

6 O. SCOTT DREXLER,

7 Defendant.

8 Case No.: 2:16:cr-00046-GMN-NJK-12

9 **ORDER DENYING WRIT OF ERROR**
10 **OF CORAM NOBIS**11 Pending before the Court is Petitioner O. Scott Drexler's Petition for Writ of Error
12 *Coram Nobis*, (ECF NO. 3592). The Government filed a Response, (ECF No. 3595), and
13 Petitioner filed a Reply, (ECF No. 3599). For the reasons discussed below, the Court DENIES
14 the Petition.15 **I. BACKGROUND**16 On March 2, 2016, a grand jury in this district returned a Superseding Criminal
17 Indictment against Petitioner and numerous others in relation to the Bundy Ranch
18 impoundment. (*See generally* Indictment, ECF No. 27). Petitioner was charged with 18 U.S.C.
19 § 371 - Conspiracy to Commit an Offense against the United States (Count 1); 18 U.S.C. § 372
20 - Conspiracy to Impede and Injure Federal Officer (Count 2); 18 U.S.C. § 924 (c) and § 2 - Use
21 and Carry of a Firearm in Relation to a Crime of Violence and Aiding & Abetting (Counts 3, 6,
22 9 and 15); 18 U.S.C. § 111(a)(1) and (b) and § 2 - Assault on a Federal Officer and Aiding &
23 Abetting (Count 5); 18 U.S.C. § 115(a)(1)(B) and § 2 - Threatening a Federal Law
24 Enforcement Officer and Aiding & Abetting (Count 8); 18 U.S.C. § 1503 and § 2 - Obstruction
25 of the Due Administration of Justice and Aiding & Abetting (Count 12); 18 U.S.C. § 1951 and
§ 2 - Interference with Interstate Commerce (*See generally id.*). Defendant pleaded not guilty
to all the charges. (*See* Mins., ECF No. 157).

1 Due to the complex nature of the case, and after some defendants plead guilty, this Court
2 ordered the remaining defendants to trial, grouping them into three trial groups referred to as
3 Tiers 1, 2, and 3, and ordering them tried in the sequence of 3-1-2. (See Dec. 13, 2016, Order,
4 ECF No. 1106). Petitioner was joined in the first trial as part of the Tier 3 defendants. (*Id.*).
5 That trial began on February 6, 2017, and ended in a guilty verdict on some counts as to some
6 co-defendants, but, as to Petitioner, the jury was unable to reach a verdict, and the Court
7 declared a mistrial. (See Jury Trial Day 32 Mins., ECF NO. 1887). The mis-tried counts were
8 re-tried to a jury beginning on July 10, 2017. (See June 15, 2017, Order, ECF No. 2061). With
9 respect to the Petitioner, that trial ended in an acquittal as to some counts and a hung
10 jury/mistrial as to others. (See Jury Trial Day 24 Mins., ECF No. 2283).

11 Rather than proceed to a third trial on the mis-tried counts, the government entered into
12 a Plea Agreement with Petitioner, which was entered on the docket on October 23, 2017. (Plea
13 Agreement, ECF No. 2764). Among the terms of the Plea Agreement, Petitioner agreed to
14 plead to a Superseding Criminal Information charging him with one count of Obstruction of
15 Court Order in violation of 18 U.S.C. §§ 1509 and 2, a Class A misdemeanor, in return for the
16 dismissal of the remaining counts in the Superseding Criminal Indictment. (*See id.*).

17 The trial of the Tier 1 defendants began on October 30, 2017. (See Jury Trial Day 1
18 Mins., ECF No. 2796). That trial ended when the Court declared a mistrial on December 20,
19 2017, based on its finding that *Brady* violations had occurred. (See Jury Trial Day 16 Mins,
20 ECF No. 3041). Based on those findings, the Court dismissed the Superseding Criminal
21 Indictment against the Tier 1 defendants on January 8, 2018. (*See J. Dismissal*, ECF No. 3117.
22 Thereafter, the Government moved to dismiss the Indictment against the Tier 2 defendants.
23 (Mot. Dismiss, ECF No. 3178). This Court dismissed the Indictment pursuant to the motion.
24 (Feb. 7, 2018, Order, ECF No. 3179).

1 On August 9, 2018, the Court conducted its Sentencing Hearing and imposed sentence
2 on Petitioner, adjudging imprisonment of “time served” with no supervision to follow. (See J.,
3 ECF No. 3320).

4 More than five years later, on March 26, 2024, Petitioner filed the instant petition
5 arguing that he satisfies all the requirements for a writ of error *coram nobis*.

6 **II. LEGAL STANDARD**

7 Pursuant to 28 U.S.C. § 1651, “[t]he Supreme Court and all courts established by Act of
8 Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and
9 agreeable to the usages and principles of law.” The writ of error *coram nobis* is a “highly
10 unusual remedy, available only to correct grave injustices in a narrow range of cases where no
11 more conventional remedy is applicable.” *United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir.
12 2007). The writ is “used only to review errors of the most fundamental character.” *Matus-Leva*
13 v. *United States*, 287 F.3d 758, 760 (9th Cir. 2002). To qualify for a writ of error *coram nobis*,
14 the petitioner must show “(1) a more usual remedy is not available; (2) valid reasons exist for
15 not attacking the conviction earlier; (3) adverse consequences exist from the conviction
16 sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the
17 most fundamental character.” *Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir. 1987)
18 (“*Hirabayashi* requirements”). “Because these requirements are conjunctive, failure to meet
19 any one of them is fatal.” *Matus-Leva*, 287 F.3d at 760.

20 **III. DISCUSSION**

21 The Government argues that the petition should be denied because: (1) the Petition is too
22 late; (2) there was no *Brady* error in his case; and (3) none of Petitioner’s new evidence proves
23 actual innocence. (Resp. 6:1–3, ECF No. 3595). The Court begins with the first *Hirabayashi*
24 requirement.

1 **A. Whether a More Usual Remedy is Available**

2 Petitioner argues that there is no other remedy available for him to challenge his
 3 conviction from 2018 because he is not in custody and has already served his sentence. (Pet.
 4 5:3–7, ECF No. 3591). The Government seems to concede this point because their Response is
 5 focused on the remaining *Hirabayashi* requirements. Thus, the Court finds a more usual
 6 remedy is unavailable.

7 **B. Whether Valid Reasons Exist for Not Attacking Conviction Earlier**

8 The Court finds that Petitioner does not present valid reasons for not attacking his
 9 conviction sooner. A petition for a writ of error *coram nobis* is not subject to a specific statute
 10 of limitations. *United States v. Morgan*, 346 U.S. 502, 507 (1954) (*coram nobis* petition
 11 allowed “without limitation of time”). “In lieu of a specific statute of limitations, courts have
 12 required *coram nobis* petitioners to provide valid or sound reasons explaining why they did not
 13 attack their sentences or convictions earlier.” *United States v. Kwan*, 407 F.3d 1005, 1012 (9th
 14 Cir. 2005), abrogated on other grounds by *Padilla v. Kentucky*, 559 U.S. 356, 370 (2010); *see also* *United States v. Riedl*, 496 F.3d 1003, 1007 (9th Cir. 2007) (denying *coram nobis* relief
 15 where defendant waited more than six years after conviction to file a petition, noting that such
 16 relief is only available where petitioner has “exercis[ed] due diligence” in bringing her concern
 17 promptly to the attention of the courts) (citation omitted); *Maghe v. United States*, 710 F.2d
 18 503, 503–04 (9th Cir. 1983) (denying *coram nobis* petition as untimely where claim could have
 19 been earlier raised and there were “no sound reasons” for the delay) (internal quotations
 20 omitted). Furthermore, the “law does not require a petitioner to challenge his conviction at the
 21 earliest opportunity; it requires only that he have sound reasons for not doing so.” *United States*
 22 *v. Njai*, 312 Fed. App’x. 953, 954 (9th Cir. 2009).

24 Here, this Court sentenced Petitioner on August 9, 2018. (*See generally* J.). He filed his
 25 *coram nobis* petition five and a half years later, on March 26, 2024. (*See generally* Pet.).

1 Petitioner's justification for this long delay is unpersuasive to the Court. First, Petitioner
2 argues that he was not made aware of the reasons for why this Court dismissed the cases
3 against the Tier 1 and Teir 2 defendants until after he was sentenced. (Pet. 6:6–15). Next,
4 Petitioner argues that he just recently learned of a follow-up memorandum authored by Bureau
5 of Land Management Special Agent and Lead Investigator Larry Wooten¹ which detailed
6 additional alleged violations committed by the United States Government in connection with
7 this case. (*Id.* 7:2–13). And lastly, Petitioner argues that he just came into possession of a
8 United States Postal Service (“USPS”) Tracking record showing that the Government failed to
9 provide the statutorily required pre-impoundment notice mandated by 43 CFR 4150.4-1(a)
10 which renders the Court Order in his case unauthorized and unlawful. (Reply 5:24–6:1, ECF
11 No. 3599). Ultimately, Plaintiff argues that he would have attacked the conviction earlier if he
12 had known why the Court dismissed the Tier 1 and Tier 2 cases and known about Wooten's
13 follow-up memorandum and the USPS tracking record.

14 The Government, on the other hand, outlined the several ways Petitioner could have
15 attacked his conviction sooner. First, Petitioner could have filed a motion to withdraw his plea
16 before the imposition of sentence in August 2018. (Resp. 7:21–8:2). Petitioner's August 2018
17 Sentencing Hearing occurred seven months after the dismissal of the Tier 1 defendants, and six
18 months after the dismissal of the Tier 2 defendants, which the Government argues was enough
19 time to file a motion to withdraw his plea and claim that the *Brady* violations in Tier 1 and Tier
20 2 changed his mind about the plea. The Court agrees with the Government and emphasizes that
21 the Tier 1 trial was a public widely-publicized trial, and its minutes have always been viewable

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23 ¹ In late October to early November 2017, during the Government's prosecution of the Tier 1 Defendants, a
24 Whistleblower Complaint authored by Larry Wooten surfaced acknowledging multiple violations of the *Bundy*
25 Defendants' civil and constitutional rights by law enforcement officers in connection with the United States'
arrest, detention, and prosecution of the *Bundy* Defendants. This along with other disclosures and revelations of
the Government's conduct in prosecuting the *Bundy* Defendants, led this Court to dismiss all the charges against
the Tier 1 Defendants with prejudice.

1 on the Court's docket. Moreover, trial transcripts have been viewable since March 2018. The
 2 reasons for why this Court dismissed the cases against the Tier 1 defendants is part of the
 3 public record. The Tier 2 defendants' case was dismissed on the same grounds as Tier 1 and its
 4 record was similarly available via public records.

5 Second, Petitioner could have filed a petition for *habeas* relief under Title 28, United
 6 States Code, Section 2255 ("§ 2255 Motion") after he was sentenced in August 2018. (Resp.
 7 9:1–3). That relief was available to him during the time he was pending a custodial "time
 8 served" sentence of imprisonment that was set to commence on November 16, 2018. (J. at 2)
 9 (setting surrender date for imprisonment to November 16, 2018); *see also Matus-Leva v. U.S.*,
 10 287 F.3d 758, 761 (9th Cir. 2002) (holding writ of error *coram nobis* precluded where more
 11 usual remedy of § 2255 motion available).

12 And as to the Wooten follow-up memorandum and USPS tracking record, Petitioner
 13 fails to show how his delay in using it to attack his conviction was sound. The Government
 14 argues and the Court agrees that this new information could have been raised by Petitioner in a
 15 Rule 33 Motion for New Trial based on newly discovered evidence. *See* Fed. R. Crim. P.
 16 33(b)(1). Petitioner had three years from the date he was adjudicated as guilty—i.e., until
 17 August 9, 2021—to file a Rule 33 Motion for New Trial. (J. at 1).² Thus, Petitioner fails to
 18 establish the second *Hirabayashi* requirement.

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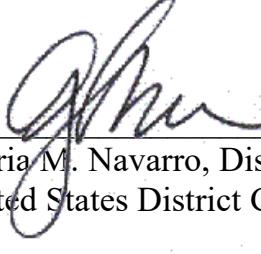
20 ² Even if Petitioner learned of this new information after August 9, 2021, he still fails to establish how this new
 21 information rises to the level of an error of the most fundamental character (*Hirabayashi* requirement four).
 22 Petitioner argues that "the error of his conviction is of the most fundamental character because the basis for his
 23 conviction, Obstruction of a Court Order, would not have been proven beyond a reasonable doubt if the case had
 24 gone to trial as the Government would not have been able to prove that the BLM officers were acting under a
 25 valid or lawful court order." (Reply 10:1–5). However, Petitioner stipulated to a detailed set of facts in his Plea
 Agreement where he admits that he was on the bridge overlooking the officers' position in the Wash on April 12,
 and that he remained there with his rifle after the officers "continuously ordered the people to disperse and leave
 the area." He stipulated that by remaining on the bridge after the order to disperse, he was making a "show of
 force to the officers and [] thereby willfully interfered with and impeded the officers in the performance of their
 duties pursuant to federal court orders." (Plea Agreement at 5). Thus, whether notice of the impoundment was
 properly mailed or not has nothing to do with the officer's orders to leave the wash area on April 12 or with

1 Because the failure to meet one of the requirements under *Hirabayashi* is fatal, the Court
2 need not analyze the remaining requirements.

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Petitioner's Writ of Error *Coram Nobis*, (ECF No.
5 3592), is **DENIED**.

6 **DATED** this 19 day of November, 2024.

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8
9 Gloria M. Navarro, District Judge
10 United States District Court

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24 Petitioner's admitted interference with those orders by remaining in place on the bridge with his rifle. Similarly,
25 the accusations in the Wooten memos about conduct of BLM agents have nothing to do with Petitioner's
decision to remain on the bridge.